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Letter dated 14 August 2008 from the Chargé d'affaires a.i. of the Permanent Mission of Morocco to the United Nations addressed to the Secretary-General

I have the honour to transmit to you the Rabat Declaration, which was adopted at the Fifth Conference of Ministers of Justice of the French-speaking African Countries on the implementation of the international counter-terrorism instruments, held in Rabat from 12 to 16 May 2008 (see annex).

I should be grateful if you would have this letter and its annex circulated as a document of the General Assembly, under agenda item 108, and of the Security Council.

(*Signed*) Hamid **Chabar**
Ambassador Extraordinary and Plenipotentiary
Deputy Permanent Representative

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Annex to the letter dated 14 August 2008 from the Chargé d'affaires a.i. of the Permanent Mission of Morocco to the United Nations addressed to the Secretary-General

Rabat Declaration

Adopted by the Fifth Conference of Ministers of Justice of the French-speaking African Countries on the implementation of the international counter-terrorism instruments

We, the Ministers of Justice and heads of delegations of the following countries: Benin, Burkina Faso, Cape Verde, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Egypt, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Madagascar, Mali, Mauritania, Morocco, Niger, Rwanda, Sao Tome and Principe, Senegal, Togo, and Tunisia;

Gathered at the Fifth Conference of Ministers of Justice of the French-speaking African Countries on the implementation of the international counter-terrorism instruments, held in Rabat from 12 to 16 May 2008;

In the presence of the United Nations, represented by the United Nations Office on Drugs and Crime and the Office of the High Commissioner for Human Rights, and the following regional and international organizations: the Central African Economic and Monetary Community, the International Organization of la Francophonie, the International Criminal Police Organization and the International Centre for the Prevention of Crime;

Reiterating our strong condemnation of all terrorist acts and all manifestations of any terrorist method or practice, which are judged to be criminal, wherever they take place, for whatever purpose they are carried out and whoever the perpetrator may be;

Recalling that the Global Counter-Terrorism Strategy, which was adopted on 8 September 2006, enhances the overall framework for the efforts made by the French-speaking African countries to effectively counter the scourge of terrorism in all its forms and manifestations;

Acknowledging that international cooperation is a key component in preventing and combating terrorism, in accordance with the obligations imposed under international law, notably, the Charter of the United Nations and the relevant international conventions and protocols and, in particular, instruments relating to human rights, the rights of refugees and international humanitarian law;

Welcoming the work accomplished during the first part of this Conference, which comprised an expert workshop for the development for the French-speaking African countries of a draft international instrument on extradition and mutual legal assistance in the context of counter-terrorism, during which experts from the French-speaking African countries represented formulated a draft convention on extradition and mutual legal assistance in matters related to counter-terrorism, pursuant to the Ouagadougou Declaration;

Noting with satisfaction the provisions of General Assembly resolution 62/71 of 6 December 2007, which "requests the Terrorism Prevention Branch of the

United Nations Office on Drugs and Crime in Vienna to continue its efforts to enhance, through its mandate, the capabilities of the United Nations in the prevention of terrorism, and recognizes, in the context of the United Nations Global Counter-Terrorism Strategy and Security Council resolution 1373 (2001), its role in assisting States in becoming parties to and implementing the relevant international conventions and protocols relating to terrorism, including the most recent among them, and in strengthening international cooperation mechanisms in criminal matters related to terrorism, including through national capacity-building";

Welcoming also the issuance of the Cairo Declaration, the Port Louis Declaration, the Sharm El-Sheikh Declaration and the Ouagadougou Declaration, adopted on 4 September 2003, 27 October 2004, 9 February 2006 and 22 March 2007, respectively, during the Conferences of Ministers of Justice of the French-speaking African Countries on the ratification and implementation of the universal counter-terrorism instruments, as documents A/C.3/58/4, A/59/811, A/60/845 and A/61/992-S/2007/416 of the General Assembly and Security Council;

1. Warmly congratulate the French-speaking African countries which, since the Ouagadougou Declaration, have ratified international counter-terrorism instruments and incorporated them into national law and submitted their reports to the counter-terrorism-related Security Council Committees;

2. Recommend that the French-speaking African countries which are not yet parties to the international counter-terrorism instruments and, in particular, the instruments against nuclear terrorism adopted in 2005, should ratify or accede to them as soon as possible and adopt the laws and regulations necessary for effective implementation;

3. Encourage the French-speaking African countries to submit their reports to the counter-terrorism-related Security Council Committees;

4. Request the United Nations Office on Drugs and Crime, in cooperation with the International Organization of la Francophonie and other competent international, regional and subregional organizations, to continue to provide the French-speaking African countries with the technical assistance required for the ratification and implementation, at the legislative level, of the international counter-terrorism instruments, for the training of criminal justice officials in international cooperation in criminal matters related to counter-terrorism and for the preparation of their reports to the counter-terrorism-related Security Council Committees;

5. Adopt the draft convention on extradition and mutual legal assistance in counter-terrorism (annexed hereto) which was formulated during the first part of this Conference, pursuant to the Ouagadougou Declaration;

6. Recommend that the French-speaking African countries sign and ratify that Convention as soon as possible; and request the United Nations Office on Drugs and Crime, in cooperation with the International Organization of la Francophonie, to provide such technical assistance as is necessary for the implementation of the Convention and the establishment and follow-up of the Conference of the States Parties;

7. Invite the French-speaking African countries to conduct an annual review of the progress made in the ratification, accession to and rapid implementation of

the international counter-terrorism instruments and submit their responses to the counter-terrorism-related Security Council Committees;

8. Invite the depositary State to bring this Declaration to the attention of the General Assembly of the United Nations at its sixty-second session and, with the technical assistance of the United Nations Office on Drugs and Crime, to register the Convention on Extradition and Mutual Legal Assistance in Counter-terrorism with the Secretary-General, in accordance with Article 102 of the Charter of the United Nations;

9. Take note of and express our appreciation for the offer made by the Government of the Republic of Madagascar to host the Sixth Conference of Ministers of Justice of the French-speaking African Countries;

10. Decide to extend the agenda of forthcoming Conferences to include transnational organized crime;

11. Congratulate the United Nations Office on Drugs and Crime and the International Organization of la Francophonie on their contribution to the sustainability of the Conference of Ministers of Justice of the French-speaking African Countries;

12. Express our sincere gratitude to the Government of the Kingdom of Morocco for having hosted and jointly organized, in Rabat, from 12 to 16 May 2008, the Fifth Conference of Ministers of Justice of the French-speaking African Countries on the implementation of the international counter-terrorism instruments, and request the President of the Conference to convey our thanks to His Excellency Mr. Abbas El Fassi, Prime Minister of the Kingdom of Morocco, and our respectful greetings to His Majesty King Mohammed VI.

Done at Rabat on 16 May 2008.

Annex

Convention on Extradition and Mutual Legal Assistance in Counter-terrorism

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Preamble

The African States Parties to this Convention, States Members of the United Nations and members of the International Organization of la Francophonie;

Reaffirming their commitment to the United Nations Global Counter-Terrorism Strategy adopted on 8 September 2006 (A/RES/60/288);

Reaffirming also the Ouagadougou Declaration (A/61/992-S/2007/416), the provisions of the Charter of la Francophonie and the principles of the Bamako and Saint Boniface Declarations;

Considering that the general principles of international law are applicable to situations that are not covered by this Convention;

Underlining the universal and indivisible nature of all civil, political, economic, social and cultural rights, including the right to development, as recognized in the Vienna Declaration of 25 June 1993, and the determination of our States and Governments, Parties to this Convention, to ensure full enjoyment thereof for every citizen;

Reaffirming their solemn decision to implement all General Assembly resolutions concerning measures to eliminate international terrorism and relating to the protection of human rights and fundamental freedoms in the fight against terrorism, and all Security Council resolutions on threats to international peace and security caused by terrorist acts;

Strongly reiterating condemnation of all forms and manifestations of terrorism, wherever it takes place, for whatever purpose it is carried out and whoever the perpetrator may be, given that it constitutes one of the most serious threats to international peace and security, in accordance with the purposes and principles enshrined in the Charter of the United Nations;

Recognizing that international cooperation is essential for preventing and combating terrorism in accordance with the obligations imposed by international law, in particular the Charter of the United Nations and the relevant international conventions and protocols, especially those instruments relating to human rights, the rights of refugees and international humanitarian law;

Committed to cooperating fully in the fight against terrorism, in accordance with their obligations under international law, in order to find, deny safe haven and bring to justice, through extradition or prosecution, any person who supports, facilitates, participates or attempts to participate in the financing, planning, preparation or perpetration of terrorist acts or provides safe havens;

Committed to ensuring that persons responsible for terrorist acts are apprehended, prosecuted or extradited, in accordance with the relevant provisions of national and international law, with due respect for human rights, the rights of refugees and international humanitarian law;

Have agreed as follows:

Part I: General provisions for mutual legal assistance and extradition

Article 1: Definitions

For the purposes of this Convention, the term:

1. "Criminal matters" includes any investigation, prosecution or legal procedure relating to a terrorist act provided for in one of the international counter-terrorism instruments set forth in paragraph 5 of this article.

2. "Extradition" shall mean the delivery of a person who is sought by the requesting State Party for criminal prosecution for one of the offences provided for, in particular, in one of the international counter-terrorism instruments set forth in paragraph 5 of this article or in order to serve the sentence imposed for such an offence.

3. "Requesting State Party" shall mean the State Party which asks the requested State Party for mutual legal assistance in respect of a criminal matter and/or the extradition or provisional arrest with a view to extradition of a person.

4. "Requested State Party" shall mean a State which receives from the Requesting State Party a request for mutual legal assistance in respect of a criminal matter and/or the extradition or provisional arrest with a view to extradition of a person.

5. "International counter-terrorism instruments" shall mean, in particular, the international instruments set forth below:

(a) Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963;

(b) Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970;

(c) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971;

(d) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973;

(e) International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979;

(f) Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980;

(g) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988;

(h) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988;

(i) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988;

(j) Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1991;

(k) International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997;

(l) International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999;

(m) International Convention for the Suppression of Acts of Nuclear Terrorism, adopted by the General Assembly of the United Nations on 13 April 2005;

(n) Amendment to the Convention on the Physical Protection of Nuclear Material, done at Vienna on 8 July 2005;

(o) Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at London on 14 October 2005;

(p) Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at London on 14 October 2005.

6. "Central authority" shall mean the authority established by each State Party in order to implement this Convention.

Article 2: Designation of the competent central authorities

Each State Party shall designate and indicate to the United Nations Office on Drugs and Crime, which in turn shall transmit to the depository of this Convention, information concerning the central authority or authorities by or through which requests for mutual legal assistance and/or extradition for the purposes of this Convention should be made or received.

Article 3: Role of the competent central authorities

The central authority shall be responsible for:

(a) Formulating and receiving requests for mutual assistance and extradition and implementing and/or ensuring the implementation of such requests;

(b) If necessary, certifying or authenticating, or having certified or authenticated, all documents and other materials submitted in response to a request for mutual assistance and/or extradition;

(c) Taking appropriate practical measures to facilitate the swift and orderly retransmission of requests for mutual assistance and extradition;

(d) Negotiating and accepting conditions relating to requests for mutual assistance and extradition, and ensuring that these conditions are observed;

(e) Taking all steps deemed necessary to transmit documentary evidence gathered in response to a request for mutual assistance or extradition to the competent authority of the requesting State Party, or authorizing any other body to do so;

(f) Carrying out the other tasks provided for by this Convention or those necessary, where appropriate, for effective and high-quality mutual assistance and/or extradition to be provided or received.

Article 4: Protection of sovereignty

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. Nothing in this Convention shall entitle a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

3. Nothing in this Convention shall oblige a State Party to grant mutual legal assistance and/or extradition if it has not ratified the international counter-terrorism instrument on which the request for mutual legal assistance and/or extradition is based.

Article 5: Exclusion of the political or fiscal exception clause

1. None of the offences set forth in the universal counter-terrorism instruments shall be regarded, for the purposes of mutual legal assistance and extradition between States Parties, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for mutual legal assistance or for extradition based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

2. None of the offences set forth in the International Convention for the Suppression of the Financing of Terrorism shall be regarded, for the purposes of mutual legal assistance and extradition between States Parties, as a fiscal offence or as an offence connected with a fiscal offence. Accordingly, a request for mutual legal assistance or for extradition based on such an offence may not be refused on the sole ground that it concerns a fiscal offence or an offence connected with a fiscal offence.

Article 6: Anti-discrimination clause

Nothing in this Convention shall be interpreted as imposing an obligation to afford mutual legal assistance in criminal matters or to extradite, if there are substantial grounds for believing that the request for mutual legal assistance in criminal matters or for extradition concerning one of the offences set forth in the international counter-terrorism instruments has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion, or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 7: Grounds for refusal

1. Reasons shall be given for any partial or total refusal to comply with a request for mutual legal assistance in criminal matters or for extradition and such reasons shall be communicated by the requested State Party to the requesting State Party.

2. Before refusing extradition or mutual legal assistance, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

3. With regard to mutual legal assistance and where possible, the central authority of the requested State Party shall be permitted to approve a request and to afford the assistance sought, subject to such conditions as it deems appropriate in the particular case under consideration, including but not limited to restrictions on all use. Once these conditions have been accepted by the requesting State Party to the satisfaction of the central authority of the requested State Party, the latter may transmit the results of the execution of the request.

4. This Convention shall not prevent the requested State Party from invoking the grounds for refusal of mutual assistance and extradition provided for by a bilateral treaty on mutual legal assistance and/or extradition, nor, in the absence of such a treaty, the applicable principles of its domestic law, including when execution of the request would be detrimental to its sovereignty, its security, its public order or other essential interests.

Part II: Mutual legal assistance

Section I: General provisions

Article 8: Purpose

The Parties shall, in accordance with the provisions of this Convention, afford to each other the widest possible measures of mutual legal assistance in all proceedings related to offences covered by the international counter-terrorism instruments, the punishment of which, at the time of the request for mutual legal assistance, falls within the jurisdiction of the judicial authorities of the requesting State.

Article 9: Scope of application

Mutual legal assistance in criminal matters to be afforded in accordance with this Convention may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

(c) Executing searches and seizures, and freezing;

(d) Examining objects and sites;

(e) Providing information, evidentiary items and expert evaluations;

(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

(h) Facilitating the voluntary appearance of persons in the requesting State Party;

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.

Article 10: Prohibition on invoking bank secrecy

States Parties shall not decline to render mutual legal assistance in criminal matters pursuant to this Convention on the ground of bank secrecy.

Article 11: Dual criminality

1. States Parties may decline to render mutual legal assistance pursuant to this Convention on the ground of absence of dual criminality.

2. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under its domestic law.

Article 12: Forms of the request

1. The central authority of the requested State Party shall accept a request for mutual assistance from a requesting State Party by any means producing a written communication and under conditions that allow it to verify the authenticity of the request.

2. In an emergency, the central authority of the requested State Party shall accept a verbal request, provided that this is confirmed by any means producing a written communication and at the earliest opportunity.

Article 13: Transmission of requests for mutual legal assistance in criminal matters

In an emergency, requests for mutual assistance shall be transmitted directly from one judicial authority to another. The central authority of the requesting Party, at its earliest convenience, shall transmit the original copy of the request to the central authority of the requested Party. All requests for mutual legal assistance may be transmitted through the International Criminal Police Organization (ICPO)-INTERPOL to the central authority of the requested Party.

Article 14: Contents of requests

1. A request for mutual legal assistance in criminal matters shall contain the following elements:

(a) Formal identification of the requesting authority conducting the investigation, prosecution or court proceedings to which the request relates, including its name, its functions and/or titles, its full contact details and those of the person authorized to answer questions related to the request, the language or languages in which the requesting authority may be contacted and, where appropriate, the case references;

(b) The legal basis for the request;

(c) A description of the assistance sought and, where appropriate, of any particular procedure that the requesting State Party wishes to be followed;

(d) The nature and legal qualification of the facts in the requesting State Party and the applicable legal provisions;[1]

(e) The purpose of the request;

(f) A description of the criminal case, including a summary of the facts, except in relation to requests for the purpose of service of judicial documents and any relevant offences and penalties;

(g) The particulars of the person to be heard as a witness or as the accused, including his or her given name, family name and, where appropriate, maiden name and any aliases; his or her sex, nationality, date and place of birth and known residence or address; the language or languages understood by the wanted person; and distinctive features, photographs and fingerprints of the wanted person;

(h) A description of the items to be seized and/or returned and, where appropriate, their locations;

(i) Such other information as is necessary for the proper execution of the request;

(j) The expected deadline required to complete the request and, in an emergency, the grounds for time constraints;

(k) Where applicable, assurances of reciprocity;

(l) The signature and official seal of the requesting authority and the date the request was issued;

(m) Where applicable, annexes containing relevant documents enclosed with the request.

2. In the event that the information referred to in paragraph 1 of this article is insufficient, the requested State Party may seek additional information from the requesting State Party.

3. When a request does not contain the information referred to in paragraph 1 of this article, the validity of this request shall not thereby be affected and this lack of information shall not be used to avoid the execution of the request.

Article 15: Applicable law

A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to its domestic law and where possible, in accordance with the procedures specified in the request.

Article 16: Confidentiality

The requested State Party shall do its utmost to maintain the confidential nature of a request and its contents, if so requested by the requesting State Party. If the request cannot be executed without breaching the requested confidentiality, the central authority of the requested State Party shall so inform the requesting State Party, which shall then determine whether the request should nevertheless be executed.

[1] Copies of incriminating documents shall be annexed to the request.

Article 17: Rule of speciality

1. The requesting State Party shall not, without the consent of the requested State Party, use or transfer information or evidence provided by the requested State Party for investigations or judicial proceedings other than those stated in the request. However, the central authority of the requesting State Party may authorize their use or transfer for these other purposes.

2. Notwithstanding the principle set out in paragraph 1 of this article, in cases where the charge is altered, the material provided may be used insofar as the offence, as charged, is an offence in respect of which mutual assistance could be provided under this Convention.

Article 18: Provision of publicly available documents and other records

1. The requested State Party shall provide copies of documents and records insofar as they are open to public access as part of a public register or otherwise, or insofar as they are available to the general public under its domestic law.

2. The requested State may provide copies of any other document or record under the same conditions as such document or record may be provided to its own law enforcement and judicial authorities.

3. The requested State Party may, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under domestic law are not available to the general public.

Article 19: Presence at the execution of the request for assistance

1. If the requested State Party so agrees, the competent authorities of the requesting State Party may nominate suitably qualified persons to witness the execution of the request for mutual assistance. In this case, the requested State Party shall inform the requesting State Party of the date and place of execution of the request for mutual assistance.

2. When they have witnessed the execution of the request for mutual assistance, the suitably qualified persons nominated by the requested State Party may receive a copy of the documents produced in response to the request.

Article 20: Certification and authentication

Unless otherwise provided for by this Convention, a request for mutual legal assistance in criminal matters and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require certification or authentication.

Article 21: Deadlines for execution of the request

1. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the requests.

The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

2. Mutual legal assistance may be postponed by the requested State Party on the grounds that it interferes with an ongoing investigation, prosecution or judicial proceeding. However, before postponing the execution of a request pursuant to paragraph 1 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

Article 22: Return of materials to the requested State

Any property, as well as original records or documents, handed over to the requesting State under this Convention shall be returned to the requested State as soon as possible unless the latter waives its right of return thereof.

Article 23: Costs of mutual legal assistance

The ordinary costs of executing a request for mutual legal assistance in criminal matters shall be borne by the requested State Party, unless otherwise determined by the Parties. If expenses of a substantial or extraordinary nature are or will be required to execute the request, the Parties shall consult in advance to determine the terms and conditions under which the request shall be executed.

Article 24: Spontaneous transmission of information

1. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

2. The authority which provides the information may, in accordance with its national law, subject its use by the recipient authority to certain conditions. The latter shall comply with these conditions.

Section II: Specific provisions relating to certain forms of mutual legal assistance in criminal matters

Article 25: Service of documents

1. Without prejudice to article 15 of this Convention, the requested State Party shall effect the service of summons and court decisions that are transmitted to it for this purpose by the requesting Party. This service may be effected by simple transmission of the summons or decision to the recipient. If expressly requested by the requesting State Party or the requesting authority, the requested States Party shall effect the service of documents in one of the forms provided for by the legislation of the requesting State Party for similar services, or in a special form compatible with this legislation.

2. Proof of service shall be effected by means of a receipt signed and dated by the recipient or a statement by the requested State Party recording the act, form and date of service. Either document shall be immediately transferred to the requesting State Party. At the request of the latter, the requested State Party shall specify whether service has been effected in accordance with its law. If service could not be effected, the requested State Party shall immediately inform the requesting State Party of the reasons for this.

3. The requested State Party may postpone the servicing of property, records or documents whose transmission is requested, if these are required by it for an ongoing criminal procedure.

4. Any property, as well as original records or documents, transmitted pursuant to the execution of a request for mutual legal assistance shall be returned by the requesting State Party to the requested authority as soon as possible unless the latter waives its right of return thereof.

Article 26: Obtaining of evidence and statements

1. If the requesting State Party considers it particularly necessary for a witness or an expert to appear in person before its judicial authorities or to assist in an investigation in relation to a criminal matter, it shall refer to this in the subpoena and the requesting central authority shall invite this expert or this witness to appear in a criminal proceeding or to assist in an investigation in relation to a criminal matter. The requested central authority shall inform the requesting authority of the response of the witness or expert. Where appropriate, the requesting State Party shall prove that the necessary arrangements have been made to guarantee the safety of the person in question.

2. A subpoena shall be delivered to the requested State Party at least 30 days before a person is to appear. In an emergency, the requested State Party shall accept an earlier deadline.

3. The payment of allowances and the reimbursement of travel and accommodation expenses to witnesses and experts by the requesting State Party shall be calculated from the place of their residence and shall be allocated to them at rates at least equal to those provided for by the tariffs and regulations in force in the State where the hearing shall be held. If so requested, the requested central authority may agree to provide the witness or expert with an advance. Such an advance shall be mentioned in the subpoena and shall be reimbursed by the requesting State Party.

4. A person who is required to give evidence in the requested or requesting State Party may decline to give evidence where either:

(a) The law of the requested State Party permits or requires that person to decline to give evidence in similar circumstances in proceedings originating in the requested State Party; or

(b) The law of the requesting State Party permits or requires that person to decline to give evidence in similar circumstances in proceedings originating in the requesting State Party.

5. If a person claims that there is a right or obligation to decline to give evidence under the law of the other State Party, the State where that person is present shall,

with respect thereto, rely on a certificate of the competent authority of the other State as evidence of the existence or non-existence of that right or obligation.

Article 27: Appearance of detained persons

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by the international counter-terrorism instruments may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The requested State Party gives its consent.

2. For the purposes of paragraph 1 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State Party from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with paragraphs 1 and 2 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State Party to which that person is transferred in respect or acts, omissions or convictions prior to his or her departure from the territory of the State Party from which such person was transferred.

4. The transit of the detained person in the territory of another State Party to this Convention shall be granted upon a request accompanied by any relevant documents and addressed by the central authority of the requesting State Party to the central authority of the requested State Party of the transit, or by the Ministry for Justice of the requesting State Party to the Ministry of Justice of the requested State Party of the transit.

Article 28: Safe conduct

1. A witness, whether or not he or she is a detainee, or an expert, whatever his or her nationality, who appears before the judicial authorities of the requesting State Party following a subpoena or who assists in an investigation in relation to a criminal matter, may not be prosecuted, detained or subjected to any other

restriction of personal liberty in the territory of this State for acts or convictions that preceded his or her departure from the requested State and were not referred to in the subpoena.

2. The immunity provided for in this article shall cease to apply if the witness or expert, being free to leave, has not left the requesting State Party within a period of 15 consecutive days after his or her presence was no longer required by the judicial authorities or, having left, has returned.

3. A person who does not consent to a request pursuant to articles 26 and 27 of this Convention shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure, notwithstanding any contrary statement.

Article 29: Obtaining evidence and statements by videoconference

1. The competent authority of the requesting State Party may request the use of video or telephone transmissions to obtain evidence, to deliver statements, to identify persons or property, or to provide any other form of assistance.

2. The costs for establishing and maintaining a video or telephone link in the requested State Party shall be borne by the requesting State Party, unless otherwise agreed.

Article 30: Search and seizure

The competent authorities of the requested State shall, insofar as its law permits, carry out requests for search and seizure and delivery of any material to the requesting State Party for evidentiary purposes, provided that the rights of bona fide third parties are protected.

Article 31: Freezing, seizure and confiscation of property, instruments of crime and proceeds of crime

1. For the purposes of this article:

(a) "Freezing" or "seizure" shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a competent authority or a court;

(b) "Confiscation" shall mean the permanent deprivation of property, in accordance with the national provisions of States, by order of a competent authority or a court;

(c) "Property" shall mean property and assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents and instruments evidencing title to or ownership of such property and assets, any property used or intended to be used, in whole or in part, in the context of or as the result of any act that constitutes an offence as defined in the universal counter-terrorism instruments;

(d) "Instruments of crime" shall mean any property:

(i) used for, or in the context of, the commission of an offence or an illicit activity; or

(ii) intended to be used for, or in the context of, the commission of an offence or an illicit activity;

whether or not the location of such property, or the site of the commission of the offence, is inside or outside the requested State Party;

(e) "Proceeds of crime" shall mean any funds derived from or obtained, directly or indirectly, through the commission of an offence referred to by the international counter-terrorism instruments, whether or not the location of such property, or the site of the commission of the offence, is inside or outside the requested State Party.

2. If so requested by a State, the competent authority of the requested State Party shall order the freezing or seizure of property, the proceeds or instruments of a crime, or property held for terrorist purposes if it is convinced that there are sufficient grounds to obtain an order for such purposes pursuant to the law of the requesting State Party. This order shall be applied as if the offence in question had been committed in the territory of the requested State Party.

3. The requested State Party, to the extent permitted by its domestic law and if so requested, shall give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.

Article 32: Official denunciation for the purpose of instituting proceedings

Any denunciation addressed by one State Party for the purpose of proceedings in the courts of another State Party shall be the subject of communications between the central authorities or the Ministries of Justice. The requested State Party shall make known the outcome of the denunciation and, where appropriate, transmit a copy of any decision reached.

Part 3: Extradition

Article 33: The obligation to extradite or prosecute

1. The States Parties undertake to extradite to the other, upon request and subject to the provisions of the present Convention, any person who is wanted in the requesting State Party for prosecution for any offence provided for in the international counter-terrorism instruments, or for the imposition or enforcement of a sentence in respect of such an offence.

2. If the requested State Party responds negatively to the extradition request, it shall be obliged, without exception, regardless of where the crime was committed or the perpetrator's nationality, and without undue delay, to submit the case to its competent authorities for the purpose of prosecution. The requesting State Party shall, to the extent possible, formally submit the case for the purposes of prosecution.

3. Each State Party shall take such measures as may be necessary to establish its jurisdiction in accordance with the present Convention in the case where the suspected offender is present in its territory and it does not extradite him to a State Party whose jurisdiction is based on a rule of jurisdiction existing equally in the law of the requested

State Party. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 34: Extraditable offences

1. For the purposes of the present Convention, extraditable offences are offences referred to in the international counter-terrorism instruments. Where the request for extradition relates to a person who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty imposed for such an offence, extradition shall be granted only if a period of at least six months of such sentence remains to be served.

2. In determining whether an offence is an offence punishable under the laws of both Parties, it shall not matter whether:

(a) The laws of the States Parties place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;

(b) Under the laws of the States Parties the constituent elements of the offence differ, it being understood that the totality of the acts or omissions as presented by the requesting State shall be taken into account.

Article 35: Mandatory grounds for refusal

Article 5 of the present Convention notwithstanding, extradition shall be refused on the following grounds:

1. Torture and other cruel, inhuman or degrading treatment or punishment: No provision of the present Convention shall be interpreted as implying an obligation to extradite if the person whose extradition is requested is at risk of being subjected to torture or cruel, inhuman or degrading treatment or punishment as defined by international law.

2. Nationality: If the person whose extradition is requested is a national of the requested State Party, where the domestic law of the latter prohibits the extradition of nationals;

3. Due process guaranties: If the person whose extradition is requested has not received or would not receive the minimum guarantees in criminal proceedings, as contained in the article 14 of the International Covenant on Civil and Political Rights;[2]

[2] Article 14 of the International Covenant on Civil and Political Rights:
1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

4. Judgement in absentia: If the judgement of the requesting State Party has been rendered in absentia, the convicted person has not had sufficient notice of the trial or the opportunity to arrange for his or her defence and he has not had or will not have the opportunity to have the case retried in his or her presence.

Article 36: Optional grounds for refusal

Extradition may be refused:

1. Final judgement: If there has been a final judgement rendered against the person in the requested State Party in respect of the offence for which the person's extradition is requested;

2. Proceedings are pending in the requested State Party: If a prosecution in respect of the offence for which extradition is requested is pending in the requested State Party against the person whose extradition is requested.

3. Statute of limitations: If prosecution or punishment of the wanted person is barred under the law of the requested State Party or the requesting State Party due to the lapse of time or the expiration of the statute of limitations at the time of receipt of the extradition request;

4. Humanitarian considerations: If the requested State Party, while also taking into account the nature of the offence and the interests of the requesting State Party, considers that, in the circumstances of the case, the extradition of that person would be

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3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
   1. To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
   2. To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
   3. To be tried without undue delay;
   4. To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
   5. To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
   6. To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
   7. Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

incompatible with humanitarian considerations in view of age, health or other personal circumstances of that person.

Article 37: Applicable sentence

If the applicable sentence in the requesting State Party's legislation for the offence for which extradition has been requested is not provided for in the law of the requested State Party, the applicable penalty for the same offences provided for by the requested State Party's legislation shall, on agreement between the two States Parties be substituted.

Article 38: Form and content of the request

1. A request for extradition shall be made in writing.

2. A request for extradition shall include the following elements:

(a) Formal identification of the requesting authority responsible for the court proceedings to which the request relates, including its name, its functions and/or title, its full contact details and those for the person authorized to answer questions regarding the request, the language or languages in which the requesting authority may be contacted and, where appropriate, case references;

(b) The nature and legal qualification of the facts in the requesting State Party or, where necessary, an explanation of the law applicable to the offence and a statement of the penalty for the offence, as well as the applicable legal provisions;[3]

(c) A description of the criminal case including a summary of the facts;

(d) The particulars of the person to be extradited, including the given name, family name and, where applicable, maiden name and any aliases; his or her sex, nationality, date and place of birth, known residence or address; the language or languages understood by the wanted person; and distinctive features, photographs and fingerprints of the wanted person;

(e) Such other information as is necessary for the proper execution of the request;

(f) Where applicable, assurances of reciprocity;

(g) The signature and official seal of the requesting authority and the date the request was issued;

(h) Annexes containing relevant documents enclosed with the request.

3. A request for extradition shall be accompanied by the following:

(a) If the person is accused of an offence, by a warrant issued by a court or other competent judicial authority for the arrest of the person or a certified copy of that warrant, a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the alleged offence, including an indication of the time and place of its commission;

(b) If the person has been convicted of an offence, by a statement of the offence for which extradition is requested and a description of the acts or omissions constituting

[3] Copies of incriminating documents shall be annexed to the request.

the offence and by the original or certified copy of the judgement or any other document setting out the conviction and the sentence imposed, the fact that the sentence is enforceable, and the extent to which the sentence remains to be served;

(c) If the person has been convicted of an offence in his or her absence, in addition to the documents set out in paragraph (b) above, by a statement as to the legal means available to the person to prepare his or her defence or to have the case retried in his or her presence;

(d) If the person has been convicted of an offence but no sentence has been imposed, by a judicial decision or by a document setting out the conviction and a statement affirming that there is an intention to impose a sentence.

4. If the information specified in paragraph 2 of the present article is not included in the request, steps shall be taken to provide it.

Article 39: Delivery of the request

The extradition request, supporting material and subsequent communications shall be sent by the designated central authorities in accordance with article 2 of the present Convention, or through the diplomatic channel.

Article 40: Simplified extradition procedure

The requested State Party, if not precluded by its law, may grant extradition after receipt of a request for provisional arrest, provided that the person sought explicitly consents before a competent authority.

Article 41: Certification and authentication

Except as provided by the present Convention, a request for extradition and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require certification or authentication.

Article 42: Additional information

If the requested State Party considers that the information provided in support of a request for extradition is not sufficient, it may request that additional information be furnished within such reasonable time as it specifies.

Article 43: Provisional arrest

1. In case of urgency the requesting State Party may apply for the provisional arrest of the person sought pending the presentation of the request for extradition. The application shall be transmitted by means of the facilities of the International Criminal Police Organization (INTERPOL), by post, or by any other means affording a record in writing.

2. The application shall contain a description of the person sought, a statement that extradition is to be requested, a statement of the existence of one of the documents mentioned in paragraph 38 of the present Convention, authorizing the apprehension of the person, a statement of the punishment that can be or has been imposed for the offence, including the time left to be served and a concise statement of the facts of the case, and a statement of the location, where known, of the person.

3. The requested State Party shall decide on the application in accordance with its law and communicate its decision to the requesting State Party without delay.

4. The person arrested upon such an application shall be set at liberty upon the expiration of 40 days from the date of arrest if a request for extradition, supported by the relevant documents specified in article 38 of the present Convention, has not been received. The present paragraph does not preclude the possibility of provisional release of the person prior to the expiration of the 40 days.

5. The release of the person pursuant to paragraph 4 of the present article shall not prevent rearrest and institution of proceedings with a view to extraditing the person sought if the request and supporting documents are subsequently received.

Article 44: Applicable law

The requested State Party shall deal with the request for extradition pursuant to procedures provided by its own law.

Article 45: Decision on the request

The requested State Party shall promptly communicate its decision to the requesting State.

Article 46: Surrender of the person

1. Upon being informed that extradition has been granted, the States Parties shall, without undue delay, arrange for the surrender of the person sought and the requested State Party shall inform the requesting State Party of the length of time for which the person sought was detained with a view to surrender.

2. The person shall be removed from the territory of the requested State Party within such reasonable period as the requested State Party specifies and, if the person is not removed within that period, the requested State Party may release the person and may refuse to extradite that person for the same offence.

3. If circumstances beyond its control prevent a State Party from surrendering or removing the person to be extradited, it shall notify the other State Party. The two States Parties shall mutually decide upon a new date of surrender, and the provisions of paragraph 2 of the present article shall apply.

Article 47: Postponed or conditional surrender

1. The requested State Party may, after making its decision on the request for extradition, postpone the surrender of a person sought, in order to proceed against that person, or, if that person has already been convicted, in order to enforce a sentence imposed for an offence other than that for which extradition is sought. In such a case the requested State Party shall advise the requesting State Party accordingly.

2. The requested State Party may, instead of postponing surrender, temporarily surrender the person sought to the requesting State Party in accordance with conditions to be determined between the Parties.

Article 48: Surrender of property

1. To the extent permitted under the law of the requested State Party and subject to the rights of third parties, which shall be duly respected, all property found in the requested State Party that has been acquired as a result of the offence or that may be required as evidence shall, if the requesting State Party so requests, be surrendered if extradition is granted.

2. The said property may, if the requesting State Party so requests, be surrendered to the requesting State Party even if the extradition agreed to cannot be carried out.

3. When the said property is liable to seizure or confiscation in the requested State Party, it may retain it or temporarily hand it over.

4. Where the law of the requested State Party or the protection of the rights of third parties so require, any property so surrendered shall be returned to the requested State Party free of charge after the completion of the proceedings, if that State Party so requests.

Article 49: Rule of speciality

1. A person extradited under the present Convention shall not be prosecuted, sentenced, detained, re-extradited to a third State, or subjected to any other restriction of personal liberty in the territory of the requesting State Party for any offence committed before surrender other than:

(a) An offence for which extradition was granted;

(b) Any other offence in respect of which the requested State Party consents. Consent shall be given if the offence for which it is requested is itself subject to extradition under the present Convention.

2. A request for the consent of the requested State Party under the present article shall be accompanied by the documents mentioned in article 38 of the present Convention and a legal record of any statement made by the extradited person with respect to the offence.

3. Paragraph 1 of the present article shall not apply if the person has had an opportunity to leave the requesting State Party and has not done so within 45 days of final discharge in respect of the offence for which that person was extradited or if the person has voluntarily returned to the territory of the requesting State Party after leaving it.

Article 50: Transit

1. Where the extradition requires transit through a third State that is Party to the present Convention, the requesting Party shall request the third State to permit the transit of that person through its territory. This does not apply where air transport is used and no landing in the territory of the other Party is scheduled.

2. Upon receipt of such a request, which shall contain relevant information, the requested State Party shall deal with this request pursuant to procedures provided by its own law. The requested State Party shall grant the request expeditiously unless its essential interests would be prejudiced thereby.

3. The State of transit shall ensure that legal provisions exist that would enable detaining the person in custody during transit.

4. In the event of an unscheduled landing, the Party to be requested to permit transit may, at the request of the escorting officer, hold the person in custody for 72 hours, pending receipt of the transit request to be made in accordance with paragraph 1 of the present article.

5. The States Parties may consider concluding bilateral or multilateral agreements on implementation of the present article.

Article 51: Concurrent requests

If extradition is requested concurrently by several States, whether for the same offence or for a different offence, the requested State Party shall, at its discretion, determine to which of those States the person is to be extradited, taking into account all circumstances, including the person's nationality, the possibility of a subsequent extradition between the two requesting States, the respective dates of the requests, and the relative gravity and location of the offences.

Article 52: Costs of extradition

1. The requested State Party shall meet the cost of any proceedings in its jurisdiction arising out of a request for extradition and the costs incurred in its territory in connection with the seizure and handing over of property, or the arrest and detention of the person whose extradition is sought.

2. The requesting State Party shall bear the costs incurred in conveying the person from the territory of the requested State Party, including transit costs and other extraordinary costs associated with the extradition.

Final provisions

Article 53: Relation to other conventions, treaties and agreements

The present Convention shall apply without prejudice to other international and/or regional provisions that are more favourable to mutual legal assistance and/or extradition.

Article 54: Consultation

The States Parties shall consult promptly, at the request of either, concerning the interpretation, application or implementation of the present Convention, either generally or in relation to a particular case.

Article 55: Implementation of the Convention

1. Conference of States Parties to the Convention: A Conference of States Parties to the Convention shall be established to enhance the ability of the States Parties to implement the present Convention.

2. Secretariat: The United Nations Office for Drug Control and Crime Prevention, in cooperation with the International Organization of la Francophonie, shall provide the necessary secretariat services for the Conference of States Parties to the Convention.

3. Signature, ratification, acceptance and approval: The present Convention shall be open for signature by all States until 31 December 2009. It shall be submitted for ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Kingdom of Morocco.

4. Entry into force: The present Convention shall enter in force on the twentieth day following the date of deposit of the tenth instrument of ratification, acceptance or approval.

5. Amendments: After a period of five years from the entry into force of the present Convention, a State Party may propose an amendment and send it to the United Nations Office for Drug Control and Crime Prevention for transmission to the Kingdom of Morocco. The latter, in cooperation with the United Nations Office for Drug Control and Crime Prevention, shall send the proposed amendment to the States Parties and to the Conference of States Parties to the Convention for their review and decision on it. The Conference of States Parties to the Convention shall make every effort to reach a consensus on each amendment. Should such efforts be exhausted without agreement being reached, the amendment shall be adopted by a two-thirds majority of States Parties present and eligible to vote at the Conference of States Parties. On adoption, an amendment shall be submitted for ratification, acceptance or approval by the States Parties. Such amendment shall enter into force for a State Party 20 days after the date of deposit by said State Party with the Kingdom of Morocco. An amendment that has entered into force shall be binding on the States Parties that have agreed to it. Other States Parties shall be bound by the provisions of the present Convention and all previous amendments that they have ratified, accepted or approved.

6. Denunciation: A State Party may denounce the present Convention by means of written notification addressed to the depository of the present Convention. Such a denunciation shall take effect one year after the date of receipt of the notification by the depository of the present Convention.

7. Depository: The Kingdom of Morocco shall be the depository of the present Convention.

8. Registration: In accordance with Article 102 of the Charter of the United Nations, the present Convention shall be registered with the Secretary-General of the United Nations in New York at the request of the depository, with technical assistance from the United Nations Office for Drug Control and Crime Prevention.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed the present Convention.

_____ _____

DONE in _____

On _____.

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